

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	4:97CR3002
)	
Plaintiff,)	MEMORANDUM
v.)	AND ORDER
)	
JIMMIE C. JOHNSON,)	
)	
Defendant.)	

This matter is before the court on a motion for an extension of time for the defendant, through his counsel, to file a notice of appeal ([filing 229](#)) from the court's order entered on August 19, 2008 ([filing 220](#)), which denied the defendant's motion for reduction of sentence based upon the retroactive "crack" amendment. A pro se notice of appeal ([filing 223](#)) was previously filed by the defendant and processed by the clerk of the court pursuant to my directive ([filing 225](#)), but on September 19, 2008, the Clerk of the United States Court of Appeals for the Eighth Circuit notified the defendant that the appeal was untimely and advised him that a motion for an extension of time could be filed in the district court ([filing 228](#)).

It appears that the defendant's pro se notice of appeal was timely because although not docketed in this court until September 8, 2008, the mailing envelope addressed to the court shows that the mailing was processed by the defendant's institution, the United States Penitentiary at Terre Haute, Indiana, on September 2, 2008, only 9 business days after entry of the order being appealed.¹ See [F.R.A.P. 4\(b\)\(1\)\(A\)\(i\)](#) & [4\(c\)\(1\)](#). In any event, the defendant, through his counsel, is now

¹ The mailing was postmarked the following day, September 3, 2008. The first of the month was a federal holiday (Labor Day), which, along with intermediate weekends, is excluded from the 10-day appeal period. See [F.R.A.P. 26\(a\)\(2\)](#).

requesting “that he be granted an extension to file a timely Notice of Appeal, ten days from today’s date [September 22, 2008],” and states that “such Notice will be filed by counsel as directed by the Court.” ([Filing 229](#) at CM/ECF p. 2.) While I find there is good cause for granting an extension of time to file another notice of appeal, the extension cannot exceed a period of 30 days from the expiration of the previous appeal deadline of September 3, 2008. See [F.R.A.P. 4\(b\)\(4\)](#). Thus, the second notice of appeal must be filed no later than October 3, 2008.

IT IS ORDERED, for good cause shown, that the defendant’s motion for extension of time ([filing 229](#)) is granted, as follows:

The defendant shall have until October 3, 2008, to file a notice of appeal from the court’s order of August 19, 2008 ([filing 220](#)).

September 23, 2008.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge